



## *Sussex County Council Agendas & Minutes*

### **SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MAY 25, 2004**

**Call to Order**            The regular meeting of the Sussex County Council was held Tuesday, May 25, 2004, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Dale R. Dukes</b>	<b>President</b>
<b>Finley B. Jones, Jr.</b>	<b>Vice President</b>
<b>Lynn J. Rogers</b>	<b>Member</b>
<b>George B. Cole</b>	<b>Member</b>
<b>Vance Phillips</b>	<b>Member</b>
<b>Robert L. Stickels</b>	<b>County Administrator</b>
<b>David Baker</b>	<b>Finance Director</b>
<b>James D. Griffin</b>	<b>County Attorney</b>

**M 331 04**            A Motion was made by Mr. Rogers, seconded by Mr. Jones, to amend the  
**Approve**            Agenda by moving the "Introduction of Proposed Zoning Ordinances" and  
**Agenda**            "Any Additional Business Brought Before Council" before 10:55 a.m., the  
Fiscal 2005 Budget Presentation, and to approve the Agenda, as amended.

**Motion Adopted:**     5 Yea.

**Vote by Roll Call:**    Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea

**M 332 04**            A Motion was made by Mr. Jones, seconded by Mr. Rogers, to approve the  
**Approve**            minutes of May 11, 2004.  
**Minutes**

**Motion Adopted:**     5 Yea.

**Vote by Roll Call:**    Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea

**Corre-**            Mr. Griffin read the following correspondence:  
**spondence**

**JOAN T. ELLIS, MURRAY'S ESTATES, OCEAN VIEW, DELAWARE.**

**RE: Letter complimenting the County on the work habits of the employees of A.P. Croll & Company, who are installing sewer lines in the subdivision.**

**U.S. SMALL BUSINESS ADMINISTRATION, DELAWARE DISTRICT OFFICE, WILMINGTON, DELAWARE.**

**Corre-  
spondence  
(continued)**

**RE: Letter inviting the County Council to attend an event detailing the National Development Council's Grow America Fund. The meeting will be conducted June 9th from 9:30 – 12:00 noon at the City Hall Council Chambers in Dover.**

**LOIS EVANS.**

**RE: Letter supporting the new Easter Seals facility planned for Sussex County and asking the County Council to approve their funding request. (Mr. Stickels advised that the request would be considered during the Public Hearing on the Fiscal 2005 Budget.)**

**ANDREW J. LORENZ, DELAWARE STATE HOUSING AUTHORITY, WILMINGTON, DELAWARE.**

**RE: Letter regarding the monitoring of Community Development Block Grant (CDBG) Contract #03-02. The letter expresses their appreciation for the cooperation and assistance provided by Sussex County's Community Development Office staff during the monitoring visits.**

**THOMAS GALIFARO, RETIRED SERGEANT, U.S. CAPITOL POLICE, WASHINGTON, D.C.**

**RE: Letter regarding a funeral on April 11, 2004 for a fellow officer in Millsboro. The letter expresses that "you should be proud of each and every one, for they were not only a credit to you, but the entire State of Delaware".**

**DELAWARE DEPARTMENT OF TRANSPORTATION, DOVER, DELAWARE.**

**RE: Notice of workshops scheduled for an update on the US 113 North/South Study. The workshops will be held in Millsboro on June 7th, in Milford on June 9th, and in Georgetown on June 14th. The time for all three workshops is 4:00 p.m. to 7:00 p.m. Brief presentations are scheduled for 4:15 p.m. and repeated at 5:15 p.m. and 6:15 p.m.**

**M 333 04  
Adopt  
Proclama-  
tion**

**A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt the Proclamation entitled "PROCLAIMING THE MONTH OF MAY AS COMMUNITY ACTION MONTH".**

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;**

**Mr. Dukes, Yea**

**Adminis-  
trator's  
Report**

**Mr. Stickels read the following information in his Administrator's Report:**

**1. Holiday Schedule**

**County offices will be closed on Monday, May 31, 2004, to allow employees to observe the Memorial Day holiday. Offices will reopen at 8:30 a.m. on Tuesday, June 1, 2004.**

**There will not be a County Council meeting on Tuesday, June 1, 2004. The next regularly scheduled Council meeting will be at 6:30 p.m. on Tuesday, June 8, 2004.**

**Report  
(continued)**

**Holts  
Landing  
Sanitary  
Sewer  
District/  
Change  
Order**

**Mr. Archut, Assistant County Engineer, discussed a proposed change order for a portion of the upgrade project being performed at Bay Colony and Fairway Villas in the Holts Landing Sanitary Sewer District. Previously, the County took over the existing collection system and agreed to upgrade the system and bring it up to County standards. Mr. Archut stated that the first phase of the project includes improvements to two of the major pump stations, one in Bay Colony and one in Fairway Villas.**

**Mr. Archut reported that the proposed change order is for the upgrade of the fence that surrounds Pump Station 249 in Bay Colony. He noted that when the pump station upgrades were originally designed, a chain link fence was planned to match the fencing around the pool area. Mr. Archut advised that the pump station was moved further away from the pool and closer to homes and building lots. The Homeowners Association then requested that the fencing be upgraded to a privacy fence. Mr. Archut reported that the net increase in the price of the fencing was \$2,183.16. He noted that the homeowners will end up paying for the additional cost, since the costs will be rolled back into the project.**

**M 334 04  
Approve  
Change  
Order/  
Holts  
Landing  
Sanitary  
Sewer  
District**

**A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the Engineering Consultants, Whitman, Requardt and Associates, LLP, and the County Engineering Department, that Change Order No. 1 for Sussex County Project No. 03-02, Bay Colony and Fairway Villas Collection and Conveyance System Improvements, with Bramble Construction be approved in the amount of \$2,183.16, which increases the contract total to \$629,953.16, subject to the approval of the State of Delaware Department of Natural Resources and Environmental Control.**

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea**

**Requests**

**Mr. Stickels presented grant requests for the Council's consideration.**

**M 335 04 Councilmanic Grant**      **A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$500.00 from Mr. Dukes' Councilmanic Account to the Greater Seaford Chamber of Commerce for the 11th Annual Towne & Country Fair.**

**Motion Adopted:      5 Yea.**

**M 335 04 (continued)**      **Vote by Roll Call:      Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea**

**M 336 04 Councilmanic Grant**      **A Motion was made by Mr. Phillips, seconded by Mr. Jones, to give \$500.00, \$100.00 from each Councilmanic Account, to the AFRAM Festival for the 2004 Eastern Shore AFRAM Festival to be held in August.**

**Motion Adopted:      5 Yea.**

**Vote by Roll Call:      Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea**

**Proposed Ordinance**      **Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BOAT STORAGE FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 29.138 ACRES, MORE OR LESS" (Conditional Use No. 1581) filed on behalf of Leon L. Burton. The Proposed Ordinance will be advertised for Public Hearing.**

**Proposed Ordinance**      **Mr. Dukes introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SIGN SHOP FOR VEHICLE LETTERING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.15 ACRES, MORE OR LESS" (Conditional Use No. 1582) filed on behalf of Duane and Danielle Musser. The Proposed Ordinance will be advertised for Public Hearing.**

**Proposed Ordinance**      **Mr. Jones introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY FOR AN ELEVATED WATER STORAGE TANK WITH LOGO TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 20,087 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1583) filed on behalf of Tidewater Utilities, Inc. The Proposed Ordinance will be advertised for Public Hearing.**

- Proposed Ordinance**  
**(continued)**
- Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MEDICAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 1.028 ACRES, MORE OR LESS” (Conditional Use No. 1584) filed on behalf of Jose A. Pando, M.D. The Proposed Ordinance will be advertised for Public Hearing.
- Proposed Ordinance**
- Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OFFICE AND SHOP FOR A HEATING AND AIR CONDITIONING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.0 ACRE, MORE OR LESS” (Conditional Use No. 1585) filed on behalf of Hellens Heating and Air, Inc. The Proposed Ordinance will be advertised for Public Hearing.
- Proposed Ordinance**
- Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SMALL ENGINE REPAIR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 15,011 SQUARE FEET, MORE OR LESS, OF A 2.88 ACRE PARCEL” (Conditional Use No. 1586) filed on behalf of Far East Capital, Inc. The Proposed Ordinance will be advertised for Public Hearing.
- Proposed Ordinance**
- Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.11 ACRES, MORE OR LESS” (Change of Zone No. 1562) filed on behalf of John T. and Karen L. Fitzgerald. The Proposed Ordinance will be advertised for Public Hearing.
- Proposed Ordinance**
- Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 180.33 ACRES, MORE OR LESS” (Change of Zone No. 1563) filed on behalf of Colby Cox, Integrity Homes II, LLC. The Proposed Ordinance will be advertised for Public Hearing.

**Budget  
Presentation**

**Mr. Stickels presented the proposed annual operating budget for Fiscal Year 2005 and the accompanying budget letter. The power point presentation provided a comprehensive review of the proposed budget.**

**Presentation  
of the  
Fiscal  
2005  
Budget**

**The theme of the FY 2005 budget is “You Can’t Always Get What You Want!” Mr. Stickels noted that the proposed budget contains programs that will ensure that it will once again be as successful as the past 16 budgets that he has presented. The Budget Committee believes that the proposed budget is in line with past budgets and that it will allow the County government to continue to expand services to keep pace.**

**Mr. Stickels pointed out that the proposed FY 2005 budget is recommending a credit to the taxpayers in the form of a 25 percent across-the-board property tax credit. After 13 years of the County’s finances finishing the year with revenues exceeding expenditures, the Budget Committee believes County finances will not be put in jeopardy by allowing a one-time 25 percent credit. This will be the first time since FY ’89 that the taxpayers of Sussex County will see a decrease in their payment of property taxes. The credit will result in a loss of revenue to the County of approximately \$2.5 million.**

**In addition to the Tax Credit Program, a subsidy is being recommended by the Budget Committee in the form of a cap on front footage assessment charges in the sanitary sewer districts. The Budget Committee is recommending that residential homes in the sewer districts be subsidized with approximately \$300,000. This would allow establishing a cap on all front foot assessments of 125 feet per equivalent dwelling unit (EDU). This would give relief to those property owners who have front foot assessments greater than 125 feet. As with the property tax credit, the 125-foot cap is only for FY 2005. It will have to be re-evaluated with each budget if funds are available. This subsidy will not apply to vacant lots or commercial properties.**

**Mr. Stickels stated that, as is the case with the 2004 budget, the Budget Committee will continue to closely monitor the growth in budget expenditures. There are many factors beyond the control of the Budget Committee that contribute to increased spending in the General Fund Budget. He noted that, with spending demands increasing the cost of doing business, it is important that the County maintain an operating reserve (Rainy Day Fund). The proposed FY 2005 budget will have \$9.8 Million in this account. The Budget Committee is estimated an operating reserve of 25 percent of the General Fund operating budget for the forthcoming year. The Rainy Day Fund will be beneficial in addressing unanticipated revenue shortfalls or unforeseen expenditures.**

**Mr. Stickels reported that the proposed FY 2005 budget has a funding**

**Presentation  
of the  
Fiscal  
2005  
Budget  
(continued)**

recommendation from the Budget Committee in the amount of \$12.5 Million for the Appropriated Reserve account. This funding is made available from revenue expenditure savings from the FY 2003 budget. Contributors are recommended for the following: Inland Bays Land Acquisition, County Tax Rebate Credit, Sewer Project Subsidies, Sussex Land Trust Funding (Open Space), Piney Neck Land Acquisition (Dagsboro-Frankford Sanitary Sewer District), Emergency Operations Center Capital Costs, Capital Improvements Fund, Sussex County Veterans' Home, South Coastal Library Expansion, Community Improvements, Milton Library Expansion, Community Development Funding, Delaware Community Foundation, Easter Seals, First State Communication, and Cedar Neck CHEER Center.

Mr. Stickels advised that in Fiscal 2004, the County Council asked the Budget Committee to review the possibility of allowing for the capitation tax that is collected by the County to be allocated as an expenditure for the 11 independent libraries. This will generate approximately \$215,000 during FY 2005. It is the opinion of the Budget Committee that the County Council can afford to allow for this expenditure. They recommended that this be done on an annual basis and reviewed with each budget process.

Mr. Stickels reported that the following goals were used to establish the FY 2005 budget:

- **Balanced budget**
- **Maintain an operating reserve of a minimum of 25 percent**
- **Fully fund the Pension Program**
- **Operate without tax-supported debt**
- **Maintain "AA" bond rating**
- **Expand public safety**
- **Increase funding of local libraries**
- **Upgrade existing wastewater services and expand user base**
- **Maintain current tax rate while providing a 25 percent tax credit**
- **Provide subsidies to allow for the capping of front footage costs at 125 feet in the sanitary sewer districts**
- **Continue tax and sewer assistance programs**
- **Continue Open Space and Farmland Preservation Programs**
- **Continue Economic Development Stimulus Loan Program for local governments**

Mr. Stickels reported that the only increases in the entire budget are those imposed for system connection charges for new construction (5% increase). System connection charges are calculated by adding a fee for transmission costs and a fee for treatment costs. This funding is used to allow for expansion capacity for new users. Mr. Stickels noted that existing users of the water and wastewater districts will not see rate increases.

**Highlights of the Proposed Budget are as follows:**

<b>Presen- tation of the Fiscal 2005 Budget (continued)</b>	➤ <b>No Tax Increase</b>
	➤ <b>Tax Credit Program</b>
	➤ <b>125' Front Foot Assessment Cap</b>
	➤ <b>5-Year Capital Improvement Program (\$171.6 Million)</b>
	➤ <b>Additional State Police</b>
	➤ <b>Additional Paramedics</b>
	➤ <b>Increased Funding for the Open Space Program</b>
	➤ <b>Community Investment Program</b>
	➤ <b>\$9.6 Million Wastewater Subsidies</b>
	➤ <b>Increased Funding for Sussex County Volunteer Firemen's Association</b>
	➤ <b>Increased Funding for Local Libraries</b>
	➤ <b>Level and Cost of Living Increase for all Employees</b>
	➤ <b>Cost of Living Increase for all Retirees</b>
	➤ <b>28 New Employees</b>
	➤ <b>20-Year Wastewater Capacity Program</b>
	➤ <b>Revenue Sharing with Local Governments</b>
	➤ <b>Economic Development Loan Stimulus Program</b>

**Mr. Stickels encouraged the members of the County Council to review the proposed annual operating budget carefully prior to the Public Hearing scheduled for June 22, 2004.**

<b>Introduction of Proposed Ordinance</b>	<b>Mr. Dukes introduced the Proposed Ordinance entitled "AN ORDINANCE ESTABLISHING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2005". The Proposed Ordinance will be advertised for Public Hearing.</b>
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<b>Introduction of Proposed Ordinance</b>	<b>Mr. Dukes introduced the Proposed Ordinance entitled "AN ORDINANCE ESTABLISHING ANNUAL SERVICE CHARGES, ANNUAL ASSESSMENT RATES FOR COLLECTION AND TRANSMISSION AND/OR TREATMENT, AND CONNECTION CHARGES FOR ALL SUSSEX COUNTY WATER AND SANITARY SEWER DISTRICTS." The Proposed Ordinance will be advertised for Public Hearing.</b>
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<b>M 337 04 Recess</b>	<b>At 11:10 a.m., a Motion was made by Mr. Jones, seconded by Mr. Rogers, to recess until 1:00 p.m. Motion Adopted by Voice Vote.</b>
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<b>Reconvene</b>	<b>Mr. Dukes called Council back into session at 1:07 p.m.</b>
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<b>Public Hearing (C/U No. 1537)</b>	<b>A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMPUTER REPAIR AND TRAINING FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.033 ACRES, MORE OR LESS" (Conditional Use No. 1537) filed on behalf of Jeff Springfield Computer Services.</b>
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**The Planning and Zoning Commission held a Public Hearing on this**



application on May 6, 2004 at which time they deferred action.

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the County Council's record.

In response to questions raised by the County Council, Mr. Lank stated that Mr. Springfield is not eligible for a home occupation since the application is for a repair facility.

Public  
Hearing  
(C/U  
No. 1537)  
(continued)

The County Council found that Norman Barnett, Attorney, and Jeff Springfield were present on behalf of the application. They stated that Mr. Springfield and his personal assistant operate a computer services business; that 90 percent of his business requires him to go to the client's business or home; that they have less than four customers visiting the site per week; and that no large scale training is offered on the premises.

Mr. Springfield submitted into the record statistics regarding his business, including information regarding the number of on-site and off-site visits. Mr. Springfield pointed out that, since April 11, 2003 he has had 181 visits to their office.

There were no public comments and the Public Hearing was closed.

M 338 04  
Defer  
Action on  
C/U  
No. 1537

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to defer action on Conditional Use No. 1537, an application of Jeff Springfield Computer Services.

Motion Adopted: 5 Yea.

Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea

Public  
Hearing  
(C/U  
No. 1538)

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE OF CAMPING TRAILERS AND BOATS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 16.55 ACRES, MORE OR LESS" (Conditional Use No. 1538) filed on behalf of Kevin's TrailerSales, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on May 6, 2004 at which time they deferred action.

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the County Council's record.

Mr. Lank reported that correspondence was received after the Planning and Zoning Commission's Public Hearing from Kim Tephabock expressing concerns about the application and referencing the location of the site. Concern was expressed about the number of commercial or similar uses in the area; the number of entrances located so close together and that most of the entrances are located in a passing zone and a 50 mph speed zone.

Public  
Hearing  
(C/U  
No. 1538)  
(continued)

The County Council found that Kevin Sagers was present with Heidi Balliet, Attorney, and Jeff Clark of Land Tech, LLC. Ms. Balliet stated that at the Public Hearing before the Planning and Zoning Commission, she handed out proposed conditions, which have since been revised. Ms. Balliet handed out a list of the proposed findings/conditions. She stated that one of the issues in contention at the Public Hearing before the Planning and Zoning Commission was the gate and she handed out a proposed graphic of the gate. Ms. Balliet stated that the site is 16.55 acres; that they propose that the site be used as a storage facility for recreational vehicles including boats, boat trailers, travel trailers and utility trailers; that there will be no retail sales; that there will be no buildings erected on the site; that the applicant plans to put a portable shed on the site for maintenance equipment; that there will be minimal impact on Route 26; that there should be approximately 15 trips per day; that no water or septic service will be needed; that there are other commercial uses in the area; that they have addressed the concerns of the opposition through the proposed conditions; that the use illustrated on the plan provides for parking of 105 recreational vehicles and spaces measuring 10 feet by 50 feet each; that the spaces will be served by a 50 foot aisle; that the parking area comprises 3 acres of the site with direct access from Route 26 via a 24 foot wide gated drive; that the Route 26 frontage is to be fenced; that no parking spot is closer to Route 26 than 80 feet; that a vegetated buffer will be created along the easterly and westerly property lines; that the gate will be electronic; that the hours of operation will be 6:00 a.m. to 10:00 p.m.; and that the application would be limited to the 3 acre area as shown on the plat.

Mr. Cole proposed a condition that no vehicles would be parked beyond the existing wood line and that the conditional use would be limited to the 3-acre area per the site plan.

Public comments were heard.

Robert Witsil, Attorney, was present on behalf of Gary Farmer and Richard Shaubach. He advised the County Council that he was given a revised site plan by Mr. Jeff Clark and it was his understanding that the same site plan would be presented to the County Council; however, it was not. He stated that it was his understanding that the applicant would move the application eastward approximately 25 feet to provide a vegetative buffer along the boundary of Mr. Shaubach's property. He noted that this stipulation, along with the requirement of three rows of Leyland Cypress satisfied Mr. Shaubach's concerns and should be a stipulation of approval. He also noted that should the Council approve the application, the

**Public  
Hearing  
(C/U  
No. 1538)  
(continued)**

stipulations should include the reduction of the 16.55 acre application to 4.7 acres, including stormwater management pond and the area in front; that future development should be deleted; that the Applicant should be required to reapply if he intends to expand the facility; that privacy fencing should be around the entire perimeter of the storage area; that the fencing on the west side (stormwater management area) should be 8 foot high. Mr. Witsil stated that his clients have concerns about the fact that there is no water on site to assist with fire fighting abilities and that there is to be no electricity on site which raises concerns about the inability to have an alarm system.

Mr. Griffin reported that the applicant stated that they had secured an electrical line to provide electrical power.

Mr. Witsil stated that if lighting is to be installed, that it should be installed at 12 feet and downward illuminated.

There were no additional public comments and the Public Hearing was closed.

**M 339 04  
Defer  
Action on  
C/U  
No. 1538**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to defer action on Conditional Use No. 1538 filed on behalf of Kevin's Trailer Sales, Inc.

Motion Adopted: 5 Yea.

Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea

**Public  
Hearing  
(C/Z  
No. 1538)**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 180.60 ACRES, MORE OR LESS" (Change of Zone No. 1538) filed on behalf of Rebay, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on May 6, 2004 at which time they deferred action.

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the County Council's record.

Mr. Lank stated that since the Public Hearing on May 6th, additional comments have been received. A letter dated May 13, 2004 was received from the Delaware Department of Transportation amending their May 4,

Public  
Hearing  
(C/Z  
No. 1538)  
(continued)

2004 letter in reference to the traffic impact study for Canal Point. In that letter, six recommendations were made regarding items that should be incorporated into the site plan and reflected on the record plan. One of those recommendations was that the plan should include street connections to Henlopen Keys and Church Street to adjacent lands that front on Holland Glade Road. Since then, they have reviewed additional materials provided by the developer's engineer and now recognize that a connection to the adjacent undeveloped lands fronting on Holland Glade Road would involve significant impacts on wetlands and that a significant portion of those lands appear to be wet. For this reason, DelDOT no longer recommends that sub-streets to those lands be required. DelDOT still recommends that street connections to Henlopen Keys be required.

Mr. Lank reported that a letter was received from the County Engineering Department, Public Works Division, which stated that the project should be subject to the review of the TAC Committee; that the streets should be designed and constructed in accordance with street design requirements of the Sussex County Code, Chapter 99; and that the streets should be curbed and utilize a closed pipe surface drainage system.

Mr. Lank reported that correspondence was received from Scott Kesler of Henlopen Keys expressing concern that the Henlopen Keys residents were not notified of the public hearings. Mr. Lank stated that at least six residents of Henlopen Keys were notified. Mr. Lank stated that notification of nearby property owners is a courtesy process provided by the County and not a requirement.

Mr. Lank reported that additional correspondence was received and the letters were distributed to the County Council members. He also reported that petitions were received from 22 parties from Sandalwood and 31 parties from Henlopen Keys. These petitions were also distributed to the County Council members.

It was noted that the majority of the property has been zoned MR since 1973; 12 acres of the property is zoned AR. The application is for an RPC and combines at least seven parcels into one application. It was further noted that the density that is being asked for is basically the same under MR zoning; however, it depends on the lay-out. It was further noted that MR zoning is strictly single family homes; and that the RPC would allow mixed housing and commercial.

Mr. Hal Dukes, one of the partners in the project, was present on behalf of the application. Also present were Chuck Howser and Zack Crouch of Davis, Bowen & Friedel, Inc., Steve Raign of Ramesh Batta Associates and Juanita Morch of the Rehoboth Beach Senior Citizen's Association. Their presentation was the same as the one outlined in the report of the Planning and Zoning Commission.

Mr. Hal Dukes stated that the MR zoning would permit 4 units to the acre;

Public  
Hearing  
(C/Z  
No. 1538)  
(continued)

that the application is for 3.5 units to the acre; that they only want to use 55 percent of the land; that no wetlands will be disturbed; that all setbacks will exceed the recommended setbacks for wetlands; that a six-acre commercial area would be established; that 25 percent of the commercial area has been vested to a senior center; that they propose a low impact commercial usage; that 617 residential units are planned (283 single family, 82 townhouse units, and 252 multi-family units with 18 units per building; that the area is surrounded by State lands; that walking paths/trails will be provided with an inter-connection to Breakwater Trail; that central amenities will be provided; and that 6 acres has been reserved for a County service area usage (paramedics, fire department, EMS, etc.)

Mr. Crouch stated that 667 EDUs have been allocated for this property (617 for single family and 50 for commercial); and that central water will be provided by the City of Rehoboth.

Mr. Raign stated that the traffic study concludes that three of the thirteen intersections currently fail and would continue to do so unless there were some improvements made; that a connector road should be constructed between Holland Glade Road and connecting to Church Street on out to Rehoboth Avenue; that an additional northbound through-lane is needed; that the developer has agreed to construct a connector road and to donate the right-of-way; that DelDOT and not the developer needs to determine the needs/improvements in the area; and that the developer has agreed to work with DelDOT and to pay their fair share for any additional improvements necessary.

Mr. Hal Dukes presented a petition from the senior center with 1,645 signatures in favor of the project.

Mrs. Morch stated that the Cape Henlopen Senior Center is working with Mr. Hal Dukes and Rebay, LLC on the Canal Point project to include a senior center as part of the community; that their current facility is located in downtown Rehoboth Beach; that they have totally outgrown their present facility; that the parking situation is a problem; that their Board believes that the best alternative is to relocate to a larger building with adequate land for parking; and that the Board went to Hal Dukes regarding lands for a senior center.

Mr. Cole stated that he believes that there should not be any commercial area or it should be highly restricted; that a possible condition could be that the commercial area shall be limited to “service oriented” usages and that no retail sales shall be permitted.

Mr. Hal Dukes responded that he has no objection to limiting the commercial use to service-oriented uses and no retail sales.

Public comments were heard.

Public  
Hearing  
(C/Z  
No. 1538)  
(continued)

Mr. Bill Lingo, one of the developers of Canal Corkran, spoke in support of the project and stated that the Futcher family (previous owners of the property) was approached by the State to purchase their farm; that the State was unable to come to terms with the family for the purchase; that the Futcher family is entitled to a fair price for their property and they sold it to a developer; that it was inevitable that the Futcher farm would be developed because of mixed zoning; and that the project is compatible with Canal Corkran. Mr. Lingo suggested that four items be a part of any final approval: the pond between Canal Point and Canal Corkran be an amenity for both projects in perpetuity; a traffic light be installed at Church Street and Rehoboth Avenue Ext.; the connection road will be a public road between the Glade Road and Hebron Road; and Canal Point be required to enter into a signalization agreement for a light at Church Street and Rehoboth Avenue Ext.

Public comments were heard in opposition to the project. The people speaking expressed concern that the rezoning would create higher density multi-family uses in an area surrounded by single family lots and homes and that it would not be in keeping with the existing zoning; that the commercial area is not needed or desired; that the developers are not addressing the elder issue; that senior citizens will not be able to afford purchasing a home in this project; that the commercial area should not back up to residential lots of other developments; that this project will add to traffic problems that already exist; that there is concern that a WaWa or similar facility will be constructed in the commercial area; that they are concerned the project will be flipped; that other developments in the area have wells which may be impacted; that safety is a concern regarding the bike paths and Little League facility; that the lot size for the senior center is not large enough; and that a building moratorium should be established until the traffic problems are resolved.

Mr. Griffin questioned the applicant as to whether he would like to have the record left open to submit proposed findings of fact and conditions and to submit evidence of a deed restriction relating to the commercial area. Mr. Hal Dukes responded in the negative, that he did not need additional time for further submissions to the County Council.

M 340 04  
Defer  
Action on  
C/Z  
No. 1538/  
Leave  
Record  
Open  
(Denied)

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on Change of Zone No. 1538, an application of Rebay, LLC, to close the Public Hearing, and to leave the record open for anyone to submit testimony for a period of thirty days and an additional fifteen days thereafter for rebuttal.

Motion Denied: 3 Nay, 2 Yea.

Vote by Roll Call: Mr. Phillips, Nay; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Nay;  
Mr. Dukes, Nay

**M 341 04**  
**Defer**  
**Action on**  
**C/Z**  
**No. 1538/**

**A Motion was made by Mr. Phillips, seconded by Mr. Jones, to defer action on Change of Zone No. 1538, an application of Rebay, LLC, to close the Public Hearing, and to leave the record open for a period of fifteen days to allow time for the opposition to submit additional testimony.**

**Motion Adopted: 4 Yea, 1 Nay.**

**M 341 04**  
**(continued)**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Nay;**  
**Mr. Rogers, Yea; Mr. Jones, Yea;**  
**Mr. Dukes, Yea**

**A Motion was made by Mr. Phillips, seconded by Mr. Jones, to adjourn at 4:19 p.m. Motion Adopted by Voice Vote.**

**M 342 04**  
**Adjourn**

**Respectfully submitted,**

**Robin A. Griffith**  
**Clerk of the Council**





